

PUBLIC NOTICE

The West Virginia Department of Environmental Protection (WVDEP) has proposed a settlement of an Administrative Penalty Order for Triple 7 Commodities, Inc. which resolves violation(s) of the West Virginia Water Pollution Control Act. In accordance with the Draft Order, Triple 7 Commodities, Inc. has been assessed administrative penalties and must comply with the Act. Final settlement is subject to comments received during the thirty (30) day period ending June 30, 2022. Comments regarding this Administrative Penalty Order may be submitted to: John Vernon, Assistant Deputy Director; West Virginia Department of Environmental Protection, Division of Mining and Reclamation, Inspection & Enforcement; 601 57th Street SE; Charleston, WV 25304; (304) 926-0499. Comments may also be submitted electronically to: DEP.Comments@wv.gov. The proposed settlement may be viewed at the following address: <http://www.dep.wv.gov/pio/Pages/Settlements,Ordersouttopublicnotice.aspx>.



west virginia department of environmental protection

Division of Mining and Reclamation
601 57th Street
Charleston, WV 25304
Phone: 304-926-0440/Fax: 304-926-0456

Harold Ward, Cabinet Secretary
dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Triple 7 Commodities, Inc
4066 S. Stewart St.
Welch, WV 24801

DATE: July 20, 2021

ORDER NO.: M-20-349

INTRODUCTION

This Consent Order is issued by the Director of the Division of Mining and Reclamation (hereinafter “Director”), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Triple 7 Commodities, Inc (hereinafter “Triple 7”).

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Triple 7 holds West Virginia National Pollution Discharge Permits (“NPDES”) issued by the West Virginia Department of Environmental Protection (“WVDEP”) for its mining and mining-related operations in West Virginia. Among those WVDEP NPDES Permits are Permit Number(s) WV1024256 and WV1025996 (“Permits”).
2. The WVDEP NPDES Permits are issued pursuant to the WVDEP’s authority under the West Virginia Water Pollution Control Act pursuant to authority delegated to the WVDEP by the United States Environmental Protection Agency under the Federal Clean Water Act for the issuance of WVDEP NPDES Permits.
3. Triple 7 has failed to submit required monthly Discharge Monitoring Reports (“DMRs”) information on its effluent discharge and other information to the WVDEP, pursuant to the terms and conditions of the WVDEP NPDES Permits. This Failure to Submit has occurred through not electronically filing the DMRs as prescribed by the Division of

Mining and Reclamation (“the Division”), or through the submission of paper copies of DMRs.

4. The Division has developed and maintains a database which compiles the information submitted in DMRs by holders of WVDEP NPDES Permits issued for mining and mining-related operations, including the information submitted by Triple 7 for the Permits (“the Database”). The Database has been used by the WVDEP to track compliance with WVDEP NPDES Permits for coal mining activities.
5. The WVDEP has evaluated agency records beginning with April 8, 2019 through March 2021 regarding Triple 7 Permit(s), DMRs, and other related information, including information submitted by the Triple 7 at the request of WVDEP, and has completed an evaluation of Triple 7 DMRs compliance.
6. Based on its evaluation, the WVDEP has documented the failure to report Monthly DMRs information required by the WVDEP NPDES Permits. The results of this investigation are included in Attachment 2 which list the WVDEP NPDES Permits that have violations.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code it is hereby agreed between the parties, and ORDERED by the Director:

1. Triple 7 shall immediately take all measures to initiate compliance with all terms and conditions of the Permit(s).
2. Triple 7 shall comply with the Compliance Schedule and reporting requirements contained in Attachment 1.
3. Within 45 days of entry of this Order, Triple 7 shall submit for the Division’s approval a proposed Corrective Action Plan (CAP) with schedule and possible applications for modification(s), outlining how and when Triple 7 will achieve compliance with Permit(s) limits for which compliance cannot be immediately achieved. This CAP shall address the Permit(s) listed in Attachment 2 of this Order. The CAP will include costs of construction, maintenance, and operation.
4. The Division shall review the proposed CAP and promptly notify Triple 7 of any comments it may have with the proposed CAP. The parties agree to work together to resolve any issues related by the Division with regards to the CAP. Within 30 days of receipt of the Division’s approval of the CAP, Triple 7 shall begin the implementation of the plan in accordance with the scheduled provided therein. Upon approval, the CAP shall be considered a part of this Order.
5. Because of Triple 7 WVDEP NPDES violations of the Permit(s), Triple 7 shall be assessed a Civil Administrative Penalty of **\$125,000 (one hundred twenty five thousand dollars)** to be paid to the Department of Environmental Protection pursuant to the Payment Agreement contained in Attachment 3. The penalty amount will be

deposited in the Mining and Reclamation Operations Fund. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or Federal Law.

6. **Total Payment in the amount of \$125,000 (one hundred twenty five thousand dollars) shall be mailed to:**

**John Vernon, Assistant Deputy Director
Division of Mining and Reclamation
WV-DEP
601 57th Street SE
Charleston, WV 25304**

7. The Order for Compliance of this Order satisfies any claim WVDEP has or may have for penalties under the West Virginia Water Pollution Control Act for violations of the effluent limits for outlets which occurred beginning with April 8, 2019 through March 2021 in relation to the specified Permits.

8. Stipulated Penalties

- a. Beginning with the entry date of the Draft Order, Triple 7 shall be liable for stipulated penalties for violations of items 2 through 6 of the Order for Compliance of this Order. These stipulated penalties shall be effective until termination of this Order. These stipulated penalties accrue as follows:
 - i. The first through the 15th day of failing to comply with all terms and conditions of this Order shall result in payment of a stipulated penalty of \$1,000 per day per violation.
 - ii. The 16th through 30th days of failing to comply with all terms and conditions of this Order shall result in payment of a stipulated penalty of \$2,000 per day per violation.
 - iii. The 31st day and all additional days of failing to comply with all terms and conditions of this Order shall result in payment of a stipulated penalty of \$3,000 per day per violation.
- b. For the period beginning April 2021 through the termination date of this Order, Triple 7 shall be liable for stipulated penalties for non-compliances for Permit specified in Attachment 2 in the following amounts:
 - i. \$10,000 for each month for each of the Permits for which Triple 7 fails to submit a required discharge monitoring report for one or more outlets with limits.

OTHER PROVISIONS

1. Triple 7 hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Triple 7 agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Triple 7 does not admit to any factual and legal determinations made by the Director and reserves all

rights and defenses available regarding liability or responsibility in any proceedings regarding Triple 7 other than proceedings, Administrative or Civil, to enforce this Order.

2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Triple 7 shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Triple 7 becomes aware of such a delay, notification shall be provided to the Enforcement Coordinator and shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Triple 7 intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Triple 7 (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Triple 7 of the obligation to comply with any applicable law, Permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Triple 7 to additional penalties and injunctive relief in accordance with the applicable law.
5. This Order shall terminate upon the verification of WVDEP that Triple 7 has met all requirements with the Order and is in full compliance.
6. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
7. This Order is binding on Triple 7, its successors and assigns.
8. The effective date of the Draft Order shall be the date this Order is signed by Triple 7.
9. The entry date of this Order shall be the date the Order is executed by the WVDEP.

Public Notice begin date: _____

Public Notice end date: _____

Jonathan Rorrer, Acting Director
Division of Mining and Reclamation
West Virginia Department of Environmental Protection

Date

Attachment 1

The Permittee shall achieve compliance with the requirements of the Order in accordance with the following Compliance Schedule:

a. Submit required Corrective Action Plan	Within 45 days of entry date of this order
b. Submit a Status Report to the Division of Mining and Reclamation's Assistant Deputy Director, Permit Inspector and Regional NPDES Supervisor addressing all Permits listed in Attachment 2	Within 60 days of approval of Corrective Action Plan
c. Submit a Semi-Annual Status Report to the Division of Mining and Reclamation's Assistant Deputy Director, Permit Inspector and Regional NPDES Supervisor addressing all Permits listed in Attachment 2	Beginning one year from entry date of Order through termination of Order
d. Continue to monitor all applicable permits/outlets/parameters per approved final effluent limits and submit per NPDES permit conditions	Monthly per Discharge Monitoring Report requirements

ATTACHMENT 2**Failures To Submit - Triple 7 Commodities Inc**

Permit	Outlet	Quarter
WV1024256	All	2Q19, 3Q19, 4Q19, 1Q20, 2Q20, 3Q20, 4Q20, Jan & Feb 2021
WV1025996	All	2Q19, 3Q19, 4Q19, 1Q20, 2Q20, 3Q20, 4Q20, Jan & Feb 2021
TOTAL		16

ATTACHMENT 3

Payment Agreement

Triple 7 Commodities, Inc.

I. Introduction

This Payment Agreement is made between the West Virginia Department of Environmental Protection (hereafter “DEP”) and Triple 7 Commodities, Inc. (hereafter “Triple 7”). The purpose of this Agreement is to resolve outstanding civil penalties incurred from violations issued to Triple 7 pursuant West Virginia Code, Chapter 22, Article 11, Section 1 et seq.

II. Background

Triple 7 incurred civil penalties based on enforcement action M-20-349. Triple 7 requested to enter into a Payment Agreement. Triple 7’s civil penalty assessment is determined to be \$125,000.00.

III. Payment Terms

A. This Agreement shall become effective upon the date of the WVDEP Director’s signature. Triple 7 agrees to pay \$25,000.00 as a down payment for all outstanding violations thirty days after receiving the demand for payment letter from the DEP. Then beginning 30 days after the down payment is due, Triple 7 agrees to pay \$10,000.00 per month for 10 consecutive months. Said payments shall be paid by Cashier’s Check or other payment form acceptable to DEP and are due every month until penalty is paid is full.

B. This Agreement is executed without any admission of fact or law as to the merits of any positions either taken or assumed by the parties hereto. This Agreement shall not be admissible in any administrative or judicial proceeding other than an action for enforcement of the Agreement.

C. Failure to meet the payment schedule contained herein will result in penalties being declared delinquent and Triple 7 may be subject to additional and escalating enforcement action.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Triple 7 Commodities, Inc

WVNPDES No.:

WV1024256, WV1025996

Treatment System Design Maximum Flow: N/A MGD

Treatment System Actual Average Flow: N/A MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#											
			No T	No T	No T	T	T	T	T AI	T AI	T AI	T I	T I	T I
a)	Amount of Pollutant Released	1 to 3	1	1	2	1	1	2	1	1	2	1	1	2
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1	3	3	3	1	1	1
c)	Sensitivity of the Environment	0 to 3	1	1	1	3	3	3	3	3	3	2	2	2
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1	1	1	1	1
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	1	1	1	1	1	1	1
	Average Potential for Harm Factor		1	1	1.2	1.4	1.4	1.6	1.8	1.8	2	1.2	1.2	1.4
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	1	2	3	1	2	3	1	2	3	1	2	3

Potential for Harm Factors:

1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)

1)d - Length of Time of Violation

1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by $\leq 40\%$ for Avg. Monthly or $\leq 100\%$ for Daily Max., exceed numeric WQ standard by $\leq 100\%$, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by $\geq 41\%$ and $\leq 300\%$ for Avg. Monthly, $\geq 101\%$ and $\leq 600\%$ for Daily Max., exceed numeric WQ standard by $\geq 101\%$ and \leq of 600% or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by $\geq 301\%$ for Avg. Monthly, $\geq 601\%$ for Daily Max., exceed numeric WQ standard by $\geq 601\%$, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

[illegible]

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
No T	Minor	Minor	\$1,000		\$0
No T	Minor	Moderate	\$1,500		\$0
No T	Moderate	Major	\$4,200		\$0
T	Moderate	Minor	\$2,400		\$0
T	Moderate	Moderate	\$3,400		\$0
T	Moderate	Major	\$4,600		\$0
T AI	Moderate	Minor	\$2,800		\$0
T AI	Moderate	Moderate	\$3,800		\$0
T AI	Moderate	Major	\$5,000		\$0
T I	Moderate	Minor	\$2,200		\$0
T I	Moderate	Moderate	\$3,200		\$0
T I	Moderate	Major	\$4,400		\$0
0	FALSE	FALSE	FALSE		\$0
TIAL	Moderate	Minor	\$2,600		\$0
TIAL	Moderate	Moderate	\$3,600		\$0
TIAL	Moderate	Major	\$4,800		\$0
0	FALSE	FALSE	FALSE	1	\$0
FTS	Major	Major	\$10,000	16	\$160,000
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$160,000

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

7.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

7.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

7.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

7.2.b.7 - Public Interest (increase to be determined)

7.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

7.2.b.9 - Staff investigative costs (increase to be determined)

7.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)

7.2.b.2 - Good Faith - 10% decrease to 10% increase

7.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

7.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
7.2.b.1 - Willfulness and/or negligence -	20		\$32,000
7.2.b.4 - Compliance/noncompliance history -	20		\$32,000
7.2.b.6 - Economic benefits - (flat monetary increase)	\$8,000		\$8,000
7.2.b.7 - Public Interest - (flat monetary increase)			\$0
7.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
7.2.b.9 - Investigative costs - (flat monetary increase)			\$0
7.2.b.10 - Other factors (size of violator)			\$0
7.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
7.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)		Decrease per WV Code 22 11-22 (a)(b)(1)	\$107,060
Public Notice Costs (flat monetary increase)	\$60		\$60
7.2.b.2 - Good Faith - Increase			\$0
7.2.b.2 - Good Faith - Decrease			\$0
7.2.b.3 - Cooperation with the Secretary			\$0
7.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$35,000)
Penalty =			\$125,000

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	\$8,000
Estimated Economic Benefit	\$8,000
Comments:	Competitive advantage: to submit DMR @ \$1,000/each x 8 quarters = \$8,000 Failure